IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7051 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHUVANDAS PUNJILAL SHAH

Versus

NAVINBHAI JAMABHAI CHAUHAN

Appearance:

1. Special Civil Application No. 7051 of 1993

MR DD VYAS for Petitioners

MR BIPIN P JASANI for Respondent No. 1

MR HD DAVE, AGP, for Respondent Nos. 2-3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/03/2003

ORAL JUDGEMENT

By filing instant petition under Article 226 of

the Constitution, the petitioners have challenged legality of judgment dated April 6, 1993, rendered by the Gujarat Secondary Education Tribunal in Application No. 269 of 1992, by which the petitioners are directed to promote the respondent No.1 to the post of Junior Clerk with effect from April 15, 1993 and give him consequential benefits.

2. The respondent No.1 was employed as a Peon by Nutan Kelvani Mandal which is running a secondary school in the name of "Nutan Vidyalaya" at Halol, District : Panchmahals. Amongst the peons, he was senior most and was possessing the qualification of S.S.C. with mathematics. In or about May, 1991, the Senior Clerk employed in the School had retired from service on attaining the age of superannuation and in his place, one Mr.Rajni B.Patel, who was employed as a Junior Clerk, was appointed. The strength of the students, at the relevant time, was 250 and, therefore, post of Junior Clerk was required to be filled up. The State Government has by issuing a Circular dated December 20, 1983 amended the provision contained in Clause 55.2 of the Grant-in-Aid Code by adding Clause-B to the said provision, and provided that when the post of Junior Clerk is to be filled in, it should be filled in by promoting the senior most peon having qualifications for being appointed as a Junior Clerk and who has worked for three years or more in the School. According to the respondent No.1, he was entitled to be appointed by promotion to the post of Junior Clerk, as according to him, he was possessing requisite qualifications for being appointed as a Junior Clerk and had put in 21 years' service as a peon. He was not so appointed by the petitioners and, therefore, he had approached the Tribunal by filing application under Section 38 of the Gujarat Secondary Education Act, 1972, with prayer to direct the petitioners to promote him to the post of Junior Clerk.

3. The claim of the respondent No.1 was resisted by the petitioners before the Tribunal on the ground that the post of Junior Clerk was not available in the School. In the alternative, it was pleaded by the petitioners before the Tribunal that the School was not inclined to fill in the post and, therefore, the application should be rejected.

4. Before the Tribunal the parties had submitted a written purshis indicating that no oral evidence was to be led and that the matter should be decided on the basis of the averments made in pleadings and the documents produced for consideration of the Tribunal.

5. The Tribunal, on the basis of the documents submitted by the parties and submissions advanced, has allowed the application by judgment dated April 6, 1993, giving rise to instant petition.

6. The Court has heard the learned counsel of the parties and considered the provisions of Clause 55.2 as amended by Circular dated December 20, 1983. The plea that no post of Junior Clerk was available and, therefore, the directions given by the Tribunal should be set aside, is devoid of merits. In view of the provisions of Regulation 19 of the Gujarat Secondary Education Regulations, 1974, there is no manner of doubt that when the strength of students is more than 250, a school should have one Senior Clerk and one Junior Clerk. As noticed earlier, on retirement of Senior Clerk, one who was holding the post of Junior Clerk, was appointed as Senior Clerk after following the due procedure of selection and the post of Junior Clerk had fallen vacant. Under the circumstances, the claim advanced by the petitioners that the post of Junior Clerk was not available cannot be accepted. The second and last contention raised on behalf of the petitioners that the petitioners do not want to appoint any one on the post of Junior Clerk and, therefore, the directions given by the Tribunal should be set aside, has also no substance. The record of the case would indicate that by addressing a letter dated February 2, 1991 to the District Education Officer, the management of the School had requested the District Education Officer to grant No Objection Certificate for filling in the post of Clerk. If the intention of the management of the School had been not to fill in the post, such an application would not have been made, nor N.O.C. would have been sought. It is rightly observed by the Tribunal that such a stand was taken by the management of the School only when it came to know that it would have to fill in the post by promoting the respondent No.1. Before the Tribunal also it was clarified on behalf of the District Education Officer that though no N.O.C. was granted, the management of the School was obliged to fill in the post by promoting the qualified senior most peon. It is not the case of the petitioners that the respondent No.1 was not possessing the requisite qualifications for being promoted to the post of Junior Clerk. On overall view of the matter, the Court is satisfied that a just direction has been given by the Tribunal to the petitioners to promote the respondent No.1 to the post of Junior Clerk, and no ground is made out to interfere with the said direction in instant petition which is essentially filed under

Article 227 of the Constitution. The net result of the above discussion is that the petition is liable to be dismissed.

7. It may be stated that instant petition was placed for admission hearing before the Court on August 3, 1993 and after hearing the learned counsel of the parties, following order was passed by the Court on that day :

"Rule. Heard the learned counsel for the parties on the question of interim relief. Interim stay in terms of para 7(B) is granted on condition that as and when the school management makes any appointment to the post of junior clerk, it shall be made by promoting the petitioner."

As the petition is liable to be dismissed, interim relief granted earlier will have to be vacated. The learned counsel for the petitioners has stated at the Bar that the respondent No.1 has voluntarily retired from service on May 15, 2002. As the respondent No.1 was prevented by the petitioners from discharging duties as Junior Clerk, respondent No.1 would be entitled to benefits as indicated in the judgment of the Tribunal from April 15, 1993 till May 15, 2002 i.e. the day on which he retired voluntarily from service.

8. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs. Interim relief granted by the Court vide order dated August 3,1993 is hereby vacated. It is clarified that the respondent No.1 shall be entitled to the benefits arising out of the judgment of the Tribunal which is impugned in instant petition with effect from April 15, 1993 to May 15, 2002. The petitioners are directed to give all the necessary benefits to the respondent No.1 as early as possible and without any avoidable delay.

(J.M.Panchal, J.)

(patel)